



SEXUAL MISCONDUCT IN THE CHURCH: WHAT ARE THE RULES AND HOW IT IS HANDLED

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What is sexual misconduct?

Sexual misconduct occurs whenever one person violates his or her position by using or manipulating another for his or her own sexual gratification.

Why is sexual misconduct by clergy and other church workers so harmful?

The community has certain expectations of the church and those who work for it. They believe that the church is, and ought to be, a place where they and their families can be completely safe in moments of deepest faith and in times of vulnerability and stress. They also believe that people who have chosen to work for the church do so out of a particular commitment to God and to the Christian way of life, and they trust those persons to act in accordance with Christian principles. When church workers act inappropriately, they damage the church as an institution, give rise to scandal, and even alienate others from God.

For reasons of both professional ethics and Christian theology, sexual misconduct by members of the clergy is especially problematic. The cleric's profession is teaching the Word of God and helping others come into right relationship with God. Clergy take a vow at ordination to pattern their lives after the teachings of Christ, so that they may be a wholesome example to the people of God. Clergy who abuse the power and authority of their office by becoming sexually involved with people who are vulnerable to abuse or who are in their professional care betray their vows and their calling, as well as their victims and the church.

It is thus critically important that the church condemn sexual misconduct by clergy and other church workers in the strongest terms and have clear rules that define what it is and how it will be punished.

What is the diocesan policy on sexual misconduct?

The Episcopal Diocese of New York forbids all members of the clergy and all lay church workers from engaging in, or trying to engage in,

sexual behavior, or

sexually suggestive behavior

with a person

who is incapable of giving fully informed consent to sexual behavior, or

who is under the professional care of the member of the clergy or lay church worker in any way.

Clergy and lay church workers are also prohibited from sexually harassing their co-workers.

Any member of the clergy who violates this rule is subject to ecclesiastical discipline (discipline from the Bishop) in accordance with canon law. If the member of the clergy is employed by the diocese or is deployed by the Bishop to a congregation, he or she may also be disciplined as an employee; such discipline does not affect the individual's status as a member of the clergy and is purely an employment matter. Any lay church worker (whether employee or volunteer) who violates this rule can be disciplined by whoever supervises that lay worker in his/her church work.

Who is a member of the clergy?

Members of the clergy are persons who have been ordained as ministers of The Episcopal Church - bishops, priests and deacons - and who are subject to ecclesiastical authority of the Bishop of New York under canon law. Any ordained minister who is canonically resident in this diocese (even though living and working elsewhere), or who is licensed to work in ministry here (even though canonically resident elsewhere) must abide by these rules. Postulants and candidates for holy orders also must abide by the rules applicable to clergy.

Who is a lay church worker?

Lay church workers are non-ordained persons (including members of the professed religious orders) who are employed by or who volunteer to work for some institution affiliated with the Episcopal Diocese of New York, whether that institution is the Episcopal Diocese of New York, or a parish within the diocese, or some other institution affiliated with the diocese (for example, the Cathedral of St. John the Divine, the Seaman's Church Institute, the Episcopal Mission Society, or the Instituto Pastoral Hispano). The term "lay church workers" includes (1) anyone who receives a salary for any sort of full- or part-time church work; (2) anyone who is engaged as a consultant or other independent contractor in connection with a church-sponsored program; or (3) anyone who volunteers his/her time to assist with church-sponsored programs. Examples of employees and volunteers who are covered by these rules are listed on the following charts:

LAY CHURCH WORKERS - DIOCESE

EMPLOYEES

Chief Administrative Officer

Diocesan Secretaries

Regional Administrative

Administrative Assistants

VOLUNTEERS

Chaperones

Members of Diocesan
Trustees, Counsel or
Diocesan Committees

IPC Representatives

LAY CHURCH WORKERS - PARISH, CONGREGATION or OTHER INSTITUTION

EMPLOYEES

Choir Director

Parish Secretary

Sexton

Paid Staff Counselor or
Lay Pastoral Caregiver

Paid Director of Youth
Ministries or Christian Education

Faculty member or administrator
of a church-affiliated school

VOLUNTEERS

Lay Eucharistic Minister

Lay Eucharistic Visitor

Outreach Coordinator

Member of a pastoral
calling and caring group

Sunday School Teacher

Homeless Shelter Monitor

Soup Kitchen Worker

The rules on sexual misconduct apply to all lay church workers, not just those who are engaged in giving pastoral care to others (i.e., counselors, lay pastoral callers, lay Eucharistic ministers, etc.). However, they apply only if the prohibited conduct is committed in the context of their work for the church.

What is sexual behavior?

Sexual behavior is any kind of behavior that is designed to give sexual gratification to any of the parties involved. While it is not possible to list every form of sexual behavior, examples are not limited to the obvious (such as intercourse or oral sex), but include stimulating or suggestive kissing, touching or embracing, and photographing or depicting another person in a sexually suggestive manner. It does not matter whether the member of the clergy or lay church worker does these things or allows someone else to perform such acts on him/her--if the other party is among those with whom sexual behavior by a cleric or a lay church worker is forbidden, the conduct cannot be tolerated.

What is sexually suggestive behavior?

Sexually suggestive behavior includes unwelcome bawdy or suggestive conversations or jokes, unwelcome and persistent flirtations and showing or sharing pornographic materials. This type of behavior has been found to be improper by some courts, especially where the behavior is repeated and continues after the individual has been asked to stop.

Who is incapable of giving valid consent to sexual or sexually suggestive behavior?

Two classes of people are incapable of giving consent to sexual or sexually suggestive behavior:

- 1) Minors (under New York law, this means all persons under the age of 17), and
- 2) People who are mentally challenged, are physically unable to move, or have been drugged or are inebriated.

In every instance, a member of the clergy or lay church worker who has a sexual relationship or engages in sexually suggestive behavior with a minor will be violating applicable diocesan and/or parish or institutional rules; there are no exceptions. Furthermore, no cleric or lay church worker who has any history of child sexual abuse (civil or criminal), who has admitted prior sexual abuse, or who has been diagnosed as being a pedophile, exhibitionist or voyeur by a psychiatrist may have any interaction with children or youth under applicable insurance underwriting rules.

The diocese will refer to the District Attorney any allegation of child sexual abuse, whether made during the child's minority or later by an adult who claims to have been abused as a child. The diocese would resume its own investigation following the conclusion of the criminal investigation and any criminal proceedings that might result.

In every instance where a cleric or lay church worker has a sexual relationship with a person who is mentally challenged or unable to move, or who is inebriated or under the influence of chemical substances (whether consumed voluntarily or administered by someone else), the sexual or sexually suggestive behavior will violate applicable rules unless the member of the clergy or lay church worker can prove that he/she did not know that the other person was legally incapable of giving informed consent. Proving this will be difficult if not impossible in most cases.

A person who engages in sexual behavior with a legally incapacitated person (including a minor) may be liable to criminal charges and to a civil suit for damages, as well as to ecclesiastical and/or employment discipline. The diocese or the parish or institution where that cleric or lay church worker works may also be sued.

What persons are under the professional pastoral care of church workers?

There are people who can give legal consent to sexual contact, but who are incapable of giving fully informed consent because they are extremely vulnerable to abuse. Such people are presumptively incapable of consenting to sexual or sexually suggestive behavior with a member of the clergy or with lay church workers who are involved in their pastoral care. While sexual behavior with such persons is not a crime, it may expose the cleric or lay pastoral caregiver, as well as the institution for which he/she works, to a civil suit for damages. It is up to the cleric or lay pastoral caregiver to know about the vulnerability of individuals who are in their charge and to set appropriate boundaries.

The following people are deemed to be under the professional pastoral care of church workers, and are therefore "off limits" to those clergy and lay church workers who are involved in their pastoral care ("lay pastoral caregivers").

1. Persons who are currently being counseled or given spiritual direction by the cleric or lay church worker, and also members of their families.
2. Former counselees or directees and members of their families, if a sexual relationship between the cleric or pastoral caregiver and the former counselee or family member would compromise the integrity of the original counseling relationship or would constitute the use of the original counseling relationship for the cleric's or lay church worker's personal gratification.
3. Students who are being taught by the member of the clergy or lay church worker or who attend schools where the member of the clergy or lay church worker is an administrator (this rule applies to lay faculty and administrators at church-sponsored schools only).

NOTE this rule also applies to all church-sponsored programs.

4. For clergy, parishioners at any parish, mission or congregation served by the member of the clergy, or patients, residents or students at institutions where the cleric is a chaplain.

While these "professional ethics" violations do not have criminal implications unless the other person is a minor or is legally incapable of consent, sexually exploitative professional behavior will not be tolerated in our church settings and can result in a civil suit against the offending member of the clergy or lay church worker and the parish or institution for which they work.

Is it ever possible for a member of the clergy to have a romantic relationship with a parishioner?

Because of the special position occupied by clergy in the congregation, romances with parishioners are very dangerous for both clergy and congregants, and they are strongly discouraged by the diocese. For the protection of both cleric and parishioner, such relationships are permitted only when the member of the clergy discloses the relationship at its inception to a representative of the diocese and to a warden or member of the vestry of his/her parish. If a relationship is not properly disclosed, the diocese will presume that it is improper. Even if the relationship is disclosed, however, such a romance may be unwise; if the relationship sours, the clergy partner could be vulnerable to charges of misconduct by the other person.

Is it ever possible for a member of the clergy or lay pastoral caregiver be sure that a sexual relationship with a former counselee or spiritual directee is not exploitative?

Because of the inequality inherent in any counseling relationship and the trusting and vulnerable position in which a counselee or spiritual directee stands vis-a-vis the counselor or director, a relationship between a clergy or lay pastoral caregiver and a former counselee or directee will rarely, if ever, be mutual and equal in a way that would make a sexual relationship between them appropriate. A member of the clergy or lay pastoral caregiver who is accused of exploiting a relationship with a former counselee or member of the former counselee's family will probably find it difficult to convince the appropriate institution (whether the-diocese or a parish) that the relationship was not exploitative. At a minimum, the counseling relationship must have been over for a substantial period of time, and both parties should have undergone separate counseling prior to embarking on such a relationship. Even these steps will not guarantee that the relationship will pass muster. Relationships with current counselees or directees or members of their families are never permissible.

What is sexual harassment?

Sexual harassment is a form of sexual misconduct committed against one's co-workers (including volunteers) or subordinates at work. It occurs when a person is required (either explicitly or by implication) to submit to offensive sexually-oriented conduct as a condition of (a) getting a job, a raise or bonus, a promotion or a good assignment, or (b) avoiding demotion, undesirable assignments, or termination. The term "sexual harassment" also includes sexually-oriented conduct that unreasonably interferes with an individual's work performance or creates a hostile or offensive working environment.

Offensive sexually-oriented conduct is behavior that has some sexual content, that is unwelcome, and that would be personally offensive to a reasonable person. Some examples of such conduct include:

- recurring verbal remarks of a sexual nature, including those made as a part of any purported humorous conduct (such as off-color jokes);
- persistent sexual flirtations, propositions or requests for sexual favors or romantic relationships;
- unwanted physical touching of any kind; open displays or unsolicited showings of nude or sexually explicit photographs;

OR

- non-sexual forms of harassment that are directed only toward members of one sex (for example, always being rude or belittling to women but never to men).

Offensive sexually-oriented conduct can be direct to either men or women, and may be heterosexual or homosexual. A supervisor or high-ranking employee may be guilty of sexually harassing a subordinate, but so can an individual's co-workers or volunteers if, by their behavior, they create an environment in which the employee or volunteer is uncomfortable and has difficulty functioning.

Fear of unfounded sexual harassment charges is very great today, but it may be lessened by educating people about what harassment is. Conduct becomes sexual harassment if a reasonable person in the alleged victim's position would find it intimidating. Therefore, one or two inappropriate comments or unwanted requests for a date are generally not enough to create a hostile work environment. But continuing such conduct after being told to stop is out of bounds. So is any unwanted physical touching, or any suggestion that a favorable job action depends on the receipt of sexual favors.

Remember, sexual harassment is not about sex; it is about the abuse of power.

What should I do if I have good reason to believe a member of the clergy or lay churchman worker has violated the diocesan rules against sexual misconduct?

If the person is a member of the clergy or is a lay employee or volunteer for the diocese, report your belief to the Canon to the Ordinary (212-316-7415). Tell the person who answers the telephone that you want to report a case of suspected sexual abuse by a member of the clergy or a lay diocesan church worker.

If the person is a lay church worker in your parish or some other Episcopal institution, then follow the procedures adopted by that institution for dealing with allegations of sexual misconduct. If you don't know what those procedures are, ask a member of the clergy or someone you trust (a vestry person, another employee) at that institution. Or call the Bishop's Office and ask to speak to someone who can help you deal with an instance of possible sexual misconduct. A diocesan representative will help you find the right person to call.

What will happen when the diocese receives a report of possible sexual misconduct by a member of the clergy?

The diocese has devised procedures for handling reports of sexual misconduct by members of the clergy. The procedures were designed to provide:

- justice for both the alleged victim and the accused member of the clergy in accordance with canon law;
- openness with the alleged victim and the accused member of the clergy in accordance with canon law;
- punishment for offenders that is proportional to the offenses committed;
- protection for a member of the clergy who may be falsely accused of sexual misconduct;
- appropriate pastoral assistance to victims, offenders, and their loved ones when sexual misconduct occurs;
- compliance with all current diocesan and national canon law.

1. If the Bishop receives a report of possible sexual misconduct, he/she will attempt to resolve the matter informally if the complainant wishes.
2. If the Bishop has sufficient reason to believe that an offense has been committed and no informal resolution is possible, he/she will:
 - refer the matter to the Standing Committee which makes the decision about whether to bring a presentment (formal charges) against the member of the clergy;
 - at an appropriate time, send a pastoral intervention team into any parish, mission or congregation that is affected by the accusation to explain the situation and begin a process of dialogue with the people served by the accused cleric.
3. When a matter is referred to the Standing Committee, the Committee will
 - examine the written charge and consider whether it states an offense under canon law.
 - if the charge does state an offense under canon law, ask the Church Attorney to undertake a formal inquiry into the factual allegations of the charge and recommend a course of action to the Standing Committee;
 - decide whether to issue a presentment;
 - send its determination to the accused, the alleged victim and the Bishop, who may, pending the completion of the trial, inhibit any member of the clergy against whom a presentment has been issued on charges of sexual misconduct.
4. If the Standing Committee issues a presentment against the accused, the member of the clergy will be tried by an Ecclesiastical Court, consisting of three clergy and two lay persons elected by the Diocesan Convention. At this trial:
 - the accused may be represented by counsel and will be offered all due process rights set forth in the national and diocesan canons;
 - if the member of the clergy is found guilty by clear and convincing evidence, the Ecclesiastical Court will hold a second proceeding to recommend the sentence to the Bishop, which may include admonition, suspension, or deposition from ordained ministry;
 - the Bishop will pronounce sentence in accordance with canon law.
5. At any time, the member of the clergy may admit the charge and submit to the discipline of the Bishop, who will determine the appropriate sentence and pronounce it.
6. If the member of the clergy wishes to continue in ministry after confession or conviction, the Bishop will require him/her to undergo a pre-sentence assessment by a person or team approved by the Church Insurance Company. That assessment will be sent to the Bishop and to the Ecclesiastical Court, if the court is involved in the case; the findings will be

considered in determining the sentence. Only clergy who are cleared to return to ministry by the assessment professional will be allowed to resume clerical work. While undergoing such an evaluation will not guarantee that the accused can remain in ministry, failure to participate when directed to do so by the Bishop means that the accused may not return to work in ministry in this diocese.

7. If the member of the clergy is found not guilty of the charges, the diocese will do everything possible to help the accused restore his/her reputation.
8. At all times, the diocese will cooperate with any civil authorities who are investigating allegations of abuse and will respond truthfully to request for information about charges of abuse. The diocese may choose to postpone formal ecclesiastical disciplinary proceedings if criminal charges are brought against a member of the clergy, although pastoral assistance will still be available to anyone (including affected congregations) who needs it. In cases where the alleged victim is still a minor at the time the report is made, the diocese will notify the appropriate civil authorities and defer the diocesan investigation.

What will happen when the diocese receives a report of alleged sexual misconduct by a lay diocesan church worker?

The procedures for dealing with allegations of sexual misconduct by a lay church worker differ from those for dealing with clergy because canon law does not apply to lay church workers. That has two separate implications. First, if a lay employee or volunteer is accused of sexual misconduct, the accusation can be treated as an employment matter and the diocese does not need to follow special canonical procedures. *[NOTE: This does not mean that the Bishop has to follow canonical procedures before administering employment discipline to a member of the clergy whom he/she employs. The Bishop can fire or suspend an errant employee from his/her job, even if that employee is a priest or deacon. However, the Bishop cannot inhibit or suspend a priest or deacon from functioning as an ordained minister without following canon law.]* However, this also means that the diocese can only deal with allegations made against lay employees and volunteers who work for the diocese. The diocese has no authority over lay persons who work or volunteer for parishes or other church-affiliated institutions. That is why parishes and institutions need to have their own rules and procedures for dealing with allegations of sexual misconduct against their own lay church workers.

If a lay diocesan church worker is accused of sexual misconduct or harassment, the following steps will be taken.

- The Chief Administrative Officer of the diocese will appoint an investigative team to look into the charges and report back in writing on their findings and proposals for disciplinary actions.
- The Chief Administrative Officer will decide whether the allegation is supported by the evidence. He/she is not bound by the conclusion and recommendations of the

investigative team, and he/she may ask for additional information or conduct his/her own investigation prior to making a final determination.

- If the Chief Administrative Officer decides that the allegation is supported by the evidence, he/she will administer discipline that is proportional to the offense. If appropriate, or where required by the Church Insurance Company, satisfactory completion of counseling and/or training and restitution to the accused may be required before the accused can be re-employed or resume participation in diocesan sponsored activities.
- At any time during the investigation, the Chief Administrative Officer may place the accused on administrative leave or suspend the accused from participation in diocesan-sponsored activities pending the conclusion of the matter. He/she may also direct the accused to have no contact with the complainant while the matter is pending.
- The Chief Administrative Officer may also appoint a Complainant's Liaison to perform the same functions as in cases of alleged clerical misconduct.
- The diocese will follow the same rules for lay employees as for clergy concerning rehabilitation in cases where charges are not sustained, dealing with press inquiries, cooperating with authorities, and processing allegations of abuse made by minor children.
- Where a lay member of the Bishop's Senior Staff is accused of sexual misconduct, the Bishop will perform the function of the Chief Administrative Officer.

How do my parish's rules about sexual misconduct differ from the diocesan rules?

Although the diocese has provided a model policy for consideration and adoption by parishes and institutions affiliated with the diocese, each parish and institution is ultimately responsible for adopting its own rules and procedures. If those rules are to comply with the Church Insurance Company's underwriting regulations, they should not be materially different from the diocesan rules. But check with your rector, vicar or priest-in-charge to be sure.

Establishing a requirement to complete Safe Church training as a condition of volunteering or employment is the responsibility of each parish or organization. It is highly recommended that a statement about attendance requirements be added to the written policies of each parish or organization, and then communicated to every volunteer or employee before they begin work or service.

What is Safe Church training?

Safe Church training teaches participants to recognize the signs of sexual abuse and behavior of sexual perpetrators, how to respond to those behaviors when they observe them, and provides screening information to help stop abuse before it happens.

In-person Safe Church training is led by an experienced facilitator, is offered twice a year by the diocese, and covers:

- The Diocese of New York's policies and procedures.
- ***Safeguarding God's Children: Awareness & Prevention of Child Sexual Abuse*** covers: child abuse awareness & prevention, boundary issues, ethical and theological considerations, strategies for prevention in church setting, response and reporting, and the Episcopal Diocese of New York policies and procedures.
- ***Safeguarding God's People: Awareness & Prevention of Adult Sexual Harassment & Exploitation*** covers: sexual harassment and exploitation awareness & prevention, trust and safety in ministry, power and boundary issues, ethical and theological considerations, strategies for prevention in church setting, response and reporting, and the Episcopal Diocese of New York policies and procedures.

Web-based Safe Church training (Safeguarding Online) is a comprehensive multi-module training program. Specific training options & expectations are available at www.diocesenyny.org under Safe Church training.

Who needs to complete Safe Church training?

- **The Bishop requires** the following people to complete Safe Church training in-person:
 - All clergy
 - All persons in the ordination process
 - All persons serving in field education assignments
 - All Lay Chaplains

NOTE in-person training is mandatory the first time. Subsequent trainings can be completed in-person or online.

- **The Bishop requires** all persons seeking a Lay Eucharistic Visitor license to attend Safe Church training in-person or online before licensure.

- **The Bishop *expects*** the following people to complete Safe Church training, either in-person or online:
 - All paid employees
 - Administrative Assist. / Secretary
 - Sexton
 - Organist / Choir Director
 - Christian Education Coordinator
 - Camp Director
 - All volunteering on a regular basis
 - Sunday/Church School Teacher
 - Warden
 - Vestry Member
 - V.B.S. Teachers & Assistants
 - Camp Counselor
 - Acolyte Leader
 - Youth Leader
 - Pastoral Visitor
 - Licensed Eucharistic Visitor
 - Licensed Eucharistic Minister
 - Licensed Worship Leader
 - Spiritual Director
 - Pastoral Counselor
 - Lay Chaplain
 - Confirmation Sponsor
 - Diocesan Standing Committee

How often does Safe Church training need to be completed?

- **The Bishop *requires*** the following people to update their training every five years, either in-person or online:
 - *All clergy*
 - *Lay Eucharistic Visitors*
 - *Lay Chaplains*
- **The Bishop *expects*:** all employees and volunteers (as listed above) to update their training every five years, either in-person or online.

Establishing a requirement to complete Safe Church training as a condition of volunteering or employment is the responsibility of each parish or organization. It is highly recommended that a statement about attendance requirements be added to the written policies of each parish or organization, and then communicated to every volunteer or employee before they begin work or service.